IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION NO :1439 of 1995

Dated: 24th October 2006.

Between:

Amrat and others

..... PETITIONERS

AND

The. Commissioner of Survery Settlements & Land Records-cum-Custodian General of Evacuee Property, Andhra Pradesh and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

W.P.NO.1439 OF 1995

ORAL ORDER:

An extent of Ac.23.19 guntas in Survey Nos.273, 275 to 279 of Yenugonda Village, Mahaboobnagar District, was declared to be evacuee property by notification No.177, dated 03-07-1951, published in Gazette Ordinary, Government of Hyderabad, Volume No.82, No.29, Hyderabad, on 19-07-1951. Obviously, it is a notification issued under Section 7 of the Administration of Evacuee Property Act, 1950 (hereinafter referred as 'the Act'). In the said notification one Smt. Sara Begum was declared to be an evacuee, to whom the notified properties originally belong. On 26-06-1951, the Additional Custodian concerned directed the Deputy Custodian, Mahaboobnagar, to take possession of the abovementioned evacuee property. On 28-06-1951, the Deputy Custodian took possession of the said property. The father of the respondents 3 to 7 herein by name Immadi Pullaiah filed an appeal before the Deputy Custodian claiming title over the property. It appears that the appeal was returned to the said Pullaiah on 08-11-1952, to be presented before the Additional Custodian, Hyderabad and the same was presented again before the Additional Custodian. The Additional Custodian by his order dated 05-03-1953, allowed the appeal, holding that Pullaiah did not have an opportunity of participating in the proceedings under Section 7 of the Act, he be given an opportunity of hearing his claim, directed the Deputy Custodian to hear the claim of Mr. Pullaiah and decide the question whether the property, which was

already notified as evacuee property, is required to be so declared. On such remission, the Deputy Custodian by his order dated 10-06-1955 came to the conclusion that the land/property belong to the abovementioned Pullaiah.

Subsequently, the abovementioned Pullaiah sold off an extent of Ac.8-09 guntas in Survey No.273 referred to above by a registered document dated 16-04-1957 to one Mr. Mohammad Hussain. The said Mohammad Hussain inturn sold the property to one Mr. Mohammad Khan under a registered sale deed dated 16-12-1963. Mr. Mohammad Khan sold the said property to respondents 8 to 11 herein by a registered sale deed dated 27-12-1974.

In the meanwhile, the Deputy Custodian at Bombay, took up a *suo motu* enquiry into the question; whether the property in question was really an evacuee property; and referred the case to the Deputy Custodian General of Evacuee Property at Delhi. It is not very clear as to what was the occasion for such proceedings nor it was an issue before this Court today, in this writ petition. The Deputy Custodian General at Delhi, by his order dated 08-11-1968 remanded the matter to the Deputy Custodian at Bombay. The Deputy Custodian at Bombay by his order dated

31-12-1969, came to the conclusion that the abovementioned Pullaiah had no claim or title to the property in question and, therefore, directed the Collector,

Mahaboobnagar, to recover the possession of the said property from Pullaiah.

Aggrieved by the same, Mr. Pullaiah unsuccessfully preferred an application to review the said order. In view of the conclusion reached by the Deputy Custodian at Bombay that Mr. Pullaiah had no title to the property, obviously, the original notification, declaring the said property to be evacuee property, is revived and proceedings were issued on 16-04-1971 and 17-05-1971, by the Deputy Custodian at Bombay, allotting the abovementioned evacuee property in favour of one Mr. Tilokchand Kushiram.

Aggrieved by the decision of the Deputy Custodian at Bombay, dated 31-12-1969, Mr. Pullaiah carried the matter in appeal before the Deputy Custodian General at Delhi. The appeal was dismissed for default on 11-01-1974. Even the application to set aside the default order was dismissed by an order dated 03-06-1974. Mr. Pullaiah expired some time in the year 1975 and his Legal Representatives, i.e., respondents 3 to 7 along with respondents 8 to 11 herein, who purchased a part of the property in question by a registered sale deed dated 27-12-1974, referred to earlier, filed two separate writ petitions before this Court. Both the said writ petitions were allowed by an order dated 07-02-1980. A learned Judge of this Court came to the conclusion that there was a failure of natural justice while rendering the decision dated 31-12-1969 by the Deputy

Custodian at Bombay, holding that Mr. Pullaiah had no right over the property in question and therefore, directed the Deputy Custodian to reconsider the matter and pass appropriate orders afresh after affording an opportunity to Mr. Pullaiah.

Consequent upon the order of this Court, the Deputy Custodian (respondent 2 herein) passed an order dated

14-08-1987 coming to the conclusion that Mr. Pullaiah's claim was unsustainable. Aggrieved by the same, respondents 3 to 11 herein carried the matter in appeal before the 1st respondent. The appeal stood allowed by an order dated 11-05-1994. Hence, the present writ petition by the alleged Legal Representatives of the abovementioned Mr. Tilokchand Kushiram.

The Deputy Custodian at Bombay relied upon two factors for coming to the conclusion that Mr. Pullaiah had no title to the property, they are; firstly, that according to the Deputy Custodian, there was a statement of

Mr. Pullaiah, recorded on 28-06-1951 by the Assistant Custodian, Mehaboobnagar in file No.D5/10299/77, to the effect that the land in dispute belongs to one Smt. Sara Begum and he was only a Mali of the property; secondly, that by a registered sale deed dated some time in the year 1933, Mr. Pullaiah sold the property in favour of one

Mr. Narasimhulu on 6th Amardad, 1344 F., and the said

Narasimhulu, in turn, sold the property on 19th Dai, 1351 F., in favour of Smt. Sara Begum. The Deputy Custodian, therefore, recorded a conclusion that Mr. Pullaiah did not have any right over the property in question.

The 1st respondent, however, recorded a finding that no statement dated 28-06-1951, alleged to have been made by Mr. Pullaiah, is found in the record. Unfortunately, he recorded a further finding that;

> " It is very unlikely that Sri Immadi Pullaiah would have given any such statement ..... It is to be noted that, the notification itself is in July 1951..... there was no need for him to give a statement before issuing of notification."

I am unable to agree with the conclusion reached by the 1st respondent for the reason that the notification referred to, by the 1st respondent, is obviously the final notification, under Section 7 of the Act[W], dated 03-07-1951, referred to earlier. Under Section 7 of the Act, such a notification is required to be preceded by a notice, in the prescribed manner, of proposal to declare a property to be evacuee property with the idea of examining the scheme, if any, of any interested person in such property. Unfortunately, without examining what exactly is the date of such notice, the 1st respondent came to the conclusion that there was no occasion for

Mr. Pullaiah to give such a statement before the Assisstant Custodian. Having regard to the dates, that the alleged statement of Mr. Pullaiah is 28-06-1951, which was just about 5 days prior to the final notification under Section 7 of the Act, the existence of such a statement *per se* cannot be disbelieved. It is different matter whether the said statement is available on record or not and if not, for what reasons. It is a matter, which require an examination.

Insofar as the second ground on which the 2nd respondent relied upon for rejecting the claim of Mr. Pullaiah, i.e., the two registered sale deeds, referred to earlier, in favour of the Narasimhulu and from Narasimhulu to Sara Begum, the 1st respondent recorded a finding as follows:

> " More than all this the enquiry by the Tahsildar, Mahabubnagar in January 1954 clinches the issue as it is supported by entries in pahani and choufasla from Faslies 1351 to 1358 to the effect that Sri Immadi Pullaiah is a pattadar and occupant. If as per the registered sale deeds the transaction has really taken place in 1344 Fasli between Pullaiah and Narasimhulu and subsequently in 1351, the mutation should have been carried out. It is seen from the statement given by Sri Ahmadullah Khan before the Custodian that not even possession was taken and he did not even know the Survey numbers, extent or the name of the occupier. Obviously, it was a paper transaction

and Sri Ahmadullah Khan might not have seen these lands also."

I find no basis in law for the conclusion reached by the 1st respondent on the ground that the revenue records did not support the abovementioned two sale transactions. The revenue records, at best, be an evidence of possession, but not of title. The fact that there were two registered sale deeds, referred to above, existed is available on record, and is not in dispute.

However, the learned counsel for the respondents 3 to 11 Sri Mahipathi Rao made three submissions; (1) that the writ petition filed by the two persons called Mr. Hassanand and Mr. Deepak (petitioners 6 and 7 herein) claiming to be the Power of Attorney Holders for the first five petitioners is not maintainable as the first five petitioners were described to be the children of Tilokmal, whereas the allotment of the property in dispute by the Deputy Custodian at Bombay is in favour of Mr. Tilokchand Kushiram.

Unfortunately, this question was never examined at any stage either before the 1st respondent or the 2nd respondent for the reason that before the 2nd respondent though the Tilokchand Kushiram was a party to the dispute represented by the petitioners 6 and 7 herein and according to respondents 3 to 11 herein, the issue was raised, the 2nd respondent never recorded any

finding in this regard. Insofar as the 1st respondent is concerned, the appeal was, by the respondents 3 to 11 herein, without impleading either Tilokchand Kushiram or Tilokmal as by the date of the appeal Tilokchand Kushiram died and the respondents 8 to 11 were not aware of the details of the Legal Representatives of Mr. Tilokchand Kushiram. However, the first five petitioners herein represented by petitioners 6 and 7 filed an application for impleading them in the appeal before the 1st respondent on 19-11-1991. From the Appellate Order, it does not reflect whether the application was accepted or rejected. The learned counsel for the respondents 8 to 11 argued for the respondents were not put on notice of any such application, therefore, they have no opportunity of disputing the *locus standi* of the petitioners herein before the 1st respondent.

In the circumstances, I am of the opinion that the writ petition is required to be disposed of directing the 1st respondent to re-consider the appeal afresh with reference to the following questions and pass appropriate orders.

1. Whether the petitioners 1 to 5 herein are the Legal Representatives of the original allottee Mr. Tilokchand Kushiram and also whether the original allottee Mr. Tilokchand Kushiram and the father of the first five petitioners described as Tilokmal are one and the same.

2. Whether the two sale deeds, one in favour of Mr. Narasimhulu and the other in favour of Smt. Sara Begum, refereed to earlier, are valid and genuine.

Accordingly, with the above directions, the writ petition is disposed of, but in the circumstances, there shall be no order as to costs.

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J.Chelameswar, J

mrk
24th October 2006

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W 7. **Notification of evacuee property**:- (1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.

[(1-A) Where during the pendency of any proceeding under sub-section (1) for declaring any property to be evacuee property any person interested in the property dies, the proceeding shall, unless the Custodian otherwise directs, be continued and disposed of as if such person were alive.]

(2) Where a notice has been issued under sub-section(1) in respect of any property, such property shall, pending the determination of the question whether it is evacuee property or otherwise, be incapable of being transferred or charged in ay way, except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

(3) The Custodian shall, from time to time, notify, either by publication

in the official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under sub-section (1).